IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 663 of 2001

in

SPECIAL CIVIL APPLICATIONNo 909 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIVISIONAL CONTROLLER

Versus

GULAM ISMAIL HATIA

Appearance:

1. LETTERS PATENT APPEAL No. 663 of 2001

MR KS JHAVERI for Appellant

MR BG JANI for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.P.BUCH

Date of decision: 05/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

Being aggrieved by the judgment dated 21.2.2000 delivered in Special Civil Application No.909/2000, the appellant-original petitioner has approached this Court by way of this appeal. The facts giving rise to the present appeal in a nutshell are as under:

2. The appellant is an employer and the respondent was working as a helper. The respondent workman remained absent from 30.8.1987 to 25.9.1987 without giving any intimation to the employer or without getting prior sanction with regard to his absence. On account of the said misconduct, a departmental enquiry was conducted and ultimately by an order dated 2.1.1988 the workman was dismissed from service. Being aggrieved by the order of dismissal, the workman had approached the Labour Court and the Labour Court, by an order dated 3.3.1999 passed in Reference (LCS) No.16 of 1990, had set aside the order of dismissal and had directed that the workman should be reinstated in service with 40% of backwages which the workman was receiving at the time when he had actually served the employer last.

3. Being aggrieved by the order passed by the Labour Court, the employer had filed Special Civil Application No.909 of 2000 which has been rejected and, therefore, the employer has approached this Court.

4. It has been submitted on behalf of the appellant-employer by learned Advocate Mr K S Zaveri that by virtue of the order passed by the Labour court, no punishment has been inflicted upon the workman though it was proved in the departmental proceedings that the workman had committed misconduct. It has further been submitted by him that though there was no fault on the part of the employer, the employer has been saddled with a liability to pay 40% backwages to the workman. It has been submitted by him that the workman did not adduce any evidence before the Labour Court to show that he had remained absent from duty on account of sickness of his grandmother. Moreover, the workman did not adduce any avidence before the Labour Court to show that he had made efforts to get a job during the period when he was out of job and when the proceedings before the Labour Court were pending. It has been submitted by him that the learned Single Judge ought to have considered the above facts and should have quashed and set aside the order passed by the Labour Court.

5. On the other hand, learned Advocate Mr B G Jani appearing for the workman-original respondent has submitted that for justifiable reasons, the workman had remained absent and during his 8 years' service, for the first time, he had remained absent without getting his leave sanctioned. It has also been submitted by him that the punishment of dismissal inflicted upon the workman was very harsh and looking to the fact that the said misconduct was the first misconduct in a long career of 8 years, the employer ought not to have dismissed the workman.

6. We have heard the learned Advocates at length and have perused the order passed by the Labour Court. Upon perusal of the order of the Labour Court, we have found that though the Labour Court has quashed and set aside the order of dismissal, no other punishment has been inflicted upon the workman though the misconduct has been proved. The Labour Court has not considered the fact that the reason given by the workman for remaining absent was not supported by any evidence. It also appears that awarding backwages to the tune of 40% is also on the higher side, especially when the employer had not got services of the workman during the period when the legal proceedings were pending and the workman had not rendered any service on account of the dismissal.

7. Looking to the above facts, in our opinion, ends of justice would meet if the order of the Labour Court is modified. In our opinion, the Labour Court has not awarded any punishment though the misconduct has been proved and, therefore, we direct that two increments without future effect of the workman should be stopped by way of punishment. In our opinion, as stated hereinabove, 40% backwages is on the higher side and, therefore, we order that the employer shall pay 20% backwages on the basis of the last pay drawn (It has been stated in the order passed by the Labour Court that the last pay drawn by the workman before his dismissal was Rs.1150/- p.m. and, therefore, the amount of backwages shall be determined on the basis of the said pay). So far as the other portion of the order is concerned, it shall remain as it is. The amount of backwages as ordered above, shall be paid within 8 weeks from today.

8. In view of the above order, this appeal is allowed and the order passed by the learned Single Judge is quashed and set aside. There shall be no order as to

costs.

5.9.2001 [A R Dave, J.]
msp

[D P Buch, J.]